

March 14, 2005

Subject: Use of Proxy by Members of Credit Union Board of Directors
Division of Credit Unions Interpretive Letter I-05-01

Issue

May a credit union director give a proxy to another director to vote for him/her at a board of directors meeting?

Analysis

The use of proxy by directors is not directly addressed in the Washington State Credit Union Act, Chapter 31.12 RCW (Credit Union Act). However, the Credit Union Act does require the board of directors to manage the business and affairs of the credit union. The duties and powers of the board of directors embodied in the Credit Union Act relate to the entire board, not to individual directors. See RCW 31.12.255. This is consistent with the Washington Business Corporation Act, Title 23B RCW (Corporation Act), and general principles of corporate law.

Under general corporate law principles, the authority to manage the affairs of a corporation is vested in the board of directors as a whole, not individually. 2 William Meade Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations § 392 (perm. ed. rev. vol. 1990). Unless a corporation's charter or bylaws provide otherwise, there must be a majority of directors present at board meetings to transact business. 2 Fletcher Cyc. Corp. § 419 (perm. ed. rev. vol. 1990).

The Corporation Act also requires a majority of directors be present to form a quorum, unless the bylaws or articles of incorporation require a greater or lesser number of directors for a quorum. However, a quorum may never be less than one-third of the number of directors fixed in a corporation's bylaws or articles of incorporation. Once a quorum is present, the affirmative vote of the majority of the directors present constitutes an act of the board. RCW 23B.08.240.

Generally, corporate law does not allow the directors of a corporation to vote by proxy at directors' meetings. They must be personally present and act themselves. 2 Fletcher Cyc. Corp. § 427 (perm. ed. rev. vol. 1990).

The Corporation Act, however, allows for board members to be present at a board meeting when participating by any means of communication that allows all members "present" to hear one another. RCW 23B.08.200. This is consistent with the Model

Business Corporation Act and statutory law in a majority of states. 2 Fletcher Cyc. Corp. § 397.1 (perm. ed. rev. vol. 1990).

As stated in 1-8 Washington Corporate Law § 8.2:

“This requirement of complete communication among directors is a key provision and consistent with the proposition that a director may not act by proxy, but must be present to hear and to engage in the give and take of discussion in order to carry out his or her duty of care and fiduciary responsibility.”

Moreover, the reason why proxies are permitted for shareholder meetings and not for director meetings has been summed up, as follows:

“While authority to vote at stockholders’ meetings can be validly conferred under all modern statutes, authority to vote at directors’ meetings cannot be so conferred and a proxy issued by a director authorizing attendance at a directors’ meeting is valueless. The reason for the distinction is apparent. The stockholder, at the stockholders’ meeting, represents only himself and there is no reason why he should not delegate to another that right of representation. A director, at a directors’ meeting, on the other hand, represents not himself, but all stockholders. He is a fiduciary, with discretionary duties, entrusted to him alone that he may not delegate.” 19 Fletcher Cyc. Corp. § 2:100 (perm. ed. 2004 cum. supp.).

Conclusion

A credit union director may not give a proxy to another director to vote for him/her at a board meeting. A quorum of directors, as defined by statute and bylaws or articles of incorporation, must be present for the board to take action. Directors must be present, either physically or by electronic means, so long as all directors participating can hear one another.